

ESTTA Tracking number: **ESTTA518154**

Filing date: **01/25/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053501
Party	Defendant Del Taco, LLC
Correspondence Address	APRIL L BESL DINSMORE SHOHL LLP 255 EAST FIFTH STREET CINCINNATI, OH 45202 UNITED STATES april.besl@dinsmore.com
Submission	Opposition/Response to Motion
Filer's Name	April L Besl
Filer's e-mail	april.besl@dinsmore.com
Signature	/april l besl/
Date	01/25/2013
Attachments	Resp to Motion for Extension.pdf (3 pages)(126450 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

CHRISTIAN M. ZIEBARTH,

Petitioner,

vs.

DEL TACO LLC

Respondent.

Reg. No. 1,043,729
Cancellation No. 92053501

RESPONDENT DEL TACO LLC'S RESPONSE TO
PETITIONER'S MOTION FOR EXTENSION OF TIME

Respondent Del Taco LLC ("Del Taco") hereby submits this response to Petitioner Christian Ziebarth's ("Petitioner") Motion for Extension of Time and Corresponding Declaration (collectively "Petitioner's Motion").

Del Taco has no objection to the requested 30-day extension in light of Mr. Ziebarth's second substitution of counsel in this proceeding. However, Del Taco does object to the extent Petitioner attempts to construe Petitioner's Motion as a request for re-production of documents that were previously produced in May 2011 and accepted and acknowledged by Petitioner and both of Petitioner's prior counsel.

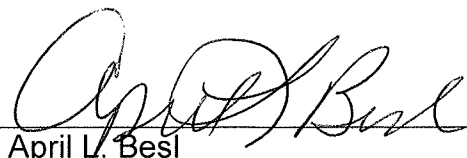
In Petitioner's Motion, Petitioner for the first time claims that he is not in possession of Del Taco's first production of documents made in early 2011. See Document 37. Further, Petitioner states that "tens of thousands of pages" are not in Petitioner's possession, thus justifying the requested extension of time. *Id.* Petitioner bases this claim on a conversation with counsel for Del Taco shortly before the filing of Petitioner's Motion. *Id.* In truth, this is a mischaracterization of the nature of the files produced, the discussion between counsel, and the extent of the documents themselves. The first production was made via CD in native format, per agreement between the parties due to issues caused by

excel spreadsheets in the production that were printing often one line of text per page. No page total was ever compiled by either side. The requested estimate casually provided to Petitioner on January 23, 2013 was based on the printing issues from the excel spreadsheet and does not accurately represent the nature of the first production. Del Taco strongly objects to the mischaracterization made by Petitioner in Petitioner's Motion given that native files were produced to and acknowledged by both of Mr. Ziebarth's prior counsel on CD, which readily addressed the issue and provided for easy review.

In fact, in the request to withdraw filed by Petitioner's second counsel on January 4, 2013, prior counsel made clear that all documentation provided to Petitioner's second counsel had been returned to Petitioner directly. See Document 34. It was only three weeks later, on the eve of a firm deadline for Petitioner set by the Board, that Petitioner retained his third counsel in this proceeding and claimed that documents were missing. See Documents 36-37. Not once did Petitioner file a motion to suspend before this deadline (as was done when Petitioner removed his first counsel in this proceeding) or send any notification of this alleged issue to Del Taco.

Discovery has long closed in this proceeding and both of Petitioner's prior counsel expressly acknowledged receipt of the first production made almost two years prior to Petitioner's Motion. Therefore, while Del Taco again does not object to the requested 30 day extension in light of Petitioner's second substitution of counsel, Del Taco expressly objects to the extent Petitioner attempts to construe Petitioner's Motion into a request for re-production of Del Taco's May 2011 document production.

Dated: **January 25, 2013**



April L. Besl
Joshua A. Lorentz
DINSMORE & SHOHL LLP
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8527-direct
(513) 977-8141-fax
april.besl@dinslaw.com

*Attorneys for Respondent
Del Taco LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by certified first-class mail, with courtesy copy via email, on this 25th of January, 2013, to Kelly K. Pfeiffer, Amezcua-Moll & Associates, P.C., Lincoln Professional Center, 1122 E. Lincoln Ave., Suite 203, Orange, CA 92865, kelly@amalaw.net.

In an abundance of caution, an additional copy is being sent via certified first-class mail to Richard F. Christesen, 6905 S 1300, E #233, Midvale, Utah, 84047, who is still listed as the attorney of record at the office.



April L. Besl